IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 345 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISHITHBHAI MANILAL THAKKER

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner No. 1

MR BY MANKAD, APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 05/09/2001

ORAL JUDGEMENT

1. Rule. Service of rule is waived by learned APP Mr. B.Y. Mankad for respondent No.1 - State of Gujarat. Heard learned Advocated Mr.Yatin Soni for the petitioner and learned APP Mr.B.Y.Mankad for the State.

2. The present petitioner had filed a complaint for the theft committed during travelling in a train. As per the FIR filed by his brother before Railway Police station, the Railway Police investigated the offence and traced out the accused and from him muddamal i.e. one bag, shirts, pants, certificates, etc. belonging to the present petitioner along with Rs. 10,000/- cash were recovered by the Police from the accused. Accused was Dhirajbhai Labubhai Patel. The present petitioner filed an application before learned Metropolitan Magistrate for having the custody of muddamal during trial on 25.6.2001. The accused was served with the notice about this application but he did not remain present for the hearing. Learned Metropolitan Magistrate vide his order dated 3rd July, 2001 directed that except the cash amount of Rs. 10,000/- the remaining muddamal be handed over to the applicant during trial on personal bond of Rs. 4,000/- and with condition that the petitioner was required to produce muddamal before the Court whenever the court so directs, but the Metropolitan Magistrate refused the request of the petitioner to return Rs. 10,000/- on the ground that since the number of the currency notes are not mentioned in the panchnama, it would be difficult for the complainant to produce the same muddamal in the court for identification and for the proof that the same muddamal was recovered from the accused.

3. In this Revision Application, learned Advocate for the petitioner submits that muddamal of Rs. 10,000/- cash is ordered to be returned to the petitioner and condition may be imposed to the extent that the same muddamal will be produced in the court by the petitioner whenever the court so directs.

4. In this view of the matter, the order impugned is required to be modified to the extent that muddamal amount of Rs.10,000/-, recovered from the accused, and since accused did not turn up before the Trial Court in respect of the notice issued in pursuance of the application filed by the petitioner, is ordered to be handed over to the present petitioner on the condition that the petitioner shall produce the muddamal of Rs. 10,000/- whenever the trial court directs the petitioner so to do.

5. With the above said order, this Revision Application is allowed to that extent. Rule is made absolute to the aforesaid extent.

(J.R. Vora, J.)

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